

**REMARKS/ARGUMENTS**

This responds to the Office Action dated 3 June 2010. Claims 1, 6, 14, and 15 have been amended. Claims 12 and 13 have been canceled. Thus, claims 1-11, 14, and 15 are currently pending. Applicants respectfully request reconsideration of the instant application in light of the following remarks.

**I. Claim 12 Objected**

In the Office Action, claim 12 stands objected. Claim 12 has been canceled as suggested by the Examiner.

**II. Claims 1-5 and 15 Rejected Under 35 U.S.C. § 103**

In the Office Action, claims 1-5, and 15 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable by U.S. Patent Application Publication No. 2002/0054689 to Zhang et al. (hereinafter, "Zhang") in view of U.S. Patent Application Publication No. 2002/0168075 to Hagen et al. (hereinafter, "Hagen") in further view of U.S. Patent Application Publication No. 2005/0283263 to Eaton et al. (hereinafter, "Eaton"). Applicants respectfully traverse this rejection.

Claim 1 has been amended to recite, *inter alia*, "executing hearing aid fitting software on the computer . . . displaying the opportunity to download a firmware program to the hearing aid programmer in response to the execution of the hearing aid fitting software on the computer." Support for this amendment

may be found in Applicant's specification, for example, page 12, paragraph [0029]. Zhang does not teach or suggest this claimed subject matter.

Instead, Zhang states:

According to the invention, the hearing aid 106 can be upgraded with software resources provided at the hearing aid upgrade server machine 108. More particularly, the hearing aid upgrade server machine 108 transmits the appropriate software resources to the client machine 104. The client machine 104 then instructs the hearing aid programming device 102 to program the hearing aid 106 in accordance with the software resources. The hearing aid programming device 102 then programs the hearing aid 106.

Zhang, page 3, paragraph [0029].

The Examiner points to this portion of Zhang to assert that Zhang teaches "executing hearing aid fitting software on the computer." As a result, the Examiner appears to assert that the "software resources" transmitted from the hearing aid upgrade server machine teach the "hearing aid fitting software." See Office Action, page 3. Zhang also states that "the hearing aid device can be upgraded by programming (or writing) the software resources . . . into the hearing aid device." Zhang, page 3, paragraph [0032].

Zhang further states:

[W]hen the decision 512 determines that the requester is verified, then the server-side hearing aid upgrade processing 500 can continue. When the processing continues, the device description file is requested and retrieved 516. Here, the device description file is resident on the client machine and is retrieved by the upgrade server . . . Then, an appropriate upgrade is determined 518 based on the device description file . . . Once the

appropriate upgrade has been determined 518, an upgrade data file is formed 520. In one embodiment, the upgrade data file includes upgrade data as well as device information from the device description file . . . The upgraded data file is also sent 524 to the client machine.

Zhang, page 5, paragraph [0050].

Here, if the requester is verified, the upgrade server machine requests “the device description file” that describes the characteristics of the hearing aid device and an “appropriate upgrade” is determined based on the “device description file.” An “upgrade data file” is then formed and used to upgrade the hearing aid device. As mentioned above, the “software resources” are used to program the hearing aid device.

As a result, the “upgrade data file” is the “software resources” used to upgrade the device. Zhang does not teach or suggest “displaying the opportunity to download a firmware program to the hearing aid programmer in response to the execution of the hearing aid fitting software on the computer” as required by claim 1 of the instant application. (Emphasis added.) Instead, as shown above, Zhang transmits “software resources” from an upgrade server machine if “the requester is verified.” Zhang does not suggest “displaying the opportunity to download a firmware program to the hearing aid programmer in response to the execution of the “software resources.”

The additions of Hagen and Eaton do not overcome the deficiencies of Zhang. In fact, the Examiner merely points to Hagen to support the assertion that “Hagen . . . teaches a hearing aid programmer which is dynamically reprogrammed from the computer through PCMCIA port.” See Office Action,

page 4. The Examiner merely points to Eaton to support the assertion that “Eaton . . . teaches server 116 obtains the audiological parameters for the hearing aid system and communicate them to the mobile device.” See Office Action, page 4. The Examiner does not point to, and Applicants cannot find, any teaching or suggestion by Hagen or Eaton of “executing hearing aid fitting software on the computer . . . displaying the opportunity to download a firmware program to the hearing aid programmer in response to the execution of the hearing aid fitting software on the computer” as required by claim 1 of the instant application.

In view of the foregoing, Applicants respectfully submit that claim 1 is patentably distinct from the cited references. Accordingly, Applicants respectfully request that the rejection of claim 1 be withdrawn.

Claims 2-5 depend either directly or indirectly from claim 1. Because of this dependency upon an allowable base claim, Applicants respectfully request that the rejection of claims 2-5 be withdrawn.

Claim 15 has been amended to recite, *inter alia*, “executing hearing aid fitting software on the computer . . . displaying the opportunity to download a firmware program to the hearing aid programmer in response to the execution of the hearing aid fitting software on the computer.” Support for this amendment may be found in Applicant's specification, for example, page 12, paragraph [0029]. Zhang does not disclose, teach, or suggest this claimed subject matter.

Instead, Zhang states:

According to the invention, the hearing aid 106 can be upgraded with software resources provided at the hearing aid upgrade server machine 108. More particularly, the hearing aid upgrade server machine 108 transmits the appropriate software resources to the client machine 104. The client machine 104 then instructs the hearing aid programming device 102 to program the hearing aid 106 in accordance with the software resources. The hearing aid programming device 102 then programs the hearing aid 106.

Zhang, page 3, paragraph [0029].

The Examiner points to this portion of Zhang to assert that Zhang teaches “executing hearing aid fitting software on the computer.” As a result, the Examiner appears to assert that the “software resources” transmitted from the hearing aid upgrade server machine teach the “hearing aid fitting software.” See Office Action, page 3. Zhang also states that “the hearing aid device can be upgraded by programming (or writing) the software resources . . . into the hearing aid device.” Zhang, page 3, paragraph [0032].

Zhang further states:

[W]hen the decision 512 determines that the requester is verified, then the server-side hearing aid upgrade processing 500 can continue. When the processing continues, the device description file is requested and retrieved 516. Here, the device description file is resident on the client machine and is retrieved by the upgrade server . . . Then, an appropriate upgrade is determined 518 based on the device description file . . . Once the appropriate upgrade has been determined 518, an upgrade data file is formed 520. In one embodiment, the upgrade data file includes upgrade data as well as device information from the device description file . . . The

upgraded data file is also sent 524 to the client machine.

Zhang, page 5, paragraph [0050].

Here, if the requester is verified, the upgrade server machine requests “the device description file” that describes the characteristics of the hearing aid device and an “appropriate upgrade” is determined based on the “device description file.” An “upgrade data file” is then formed and used to upgrade the hearing aid device. As mentioned above, the “software resources” are used to program the hearing aid device.

As a result, the “upgrade data file” is the “software resources” used to upgrade the device. Zhang does not teach, suggest, or disclose “displaying the opportunity to download a firmware program to the hearing aid programmer in response to the execution of the hearing aid fitting software on the computer” as required by claim 15 of the instant application. (Emphasis added.) Instead, as shown above, Zhang transmits “software resources” from an upgrade server machine if “the requester is verified.” Zhang does not suggest “displaying the opportunity to download a firmware program to the hearing aid programmer in response to the execution of the “software resources.”

The additions of Hagen and Eaton do not overcome the deficiencies of Zhang. In fact, the Examiner merely points to Hagen to support the assertion that “Hagen . . . teaches a hearing aid programmer which is dynamically reprogrammed from the computer through PCMCIA port.” See Office Action, page 4. The Examiner merely points to Eaton to support the assertion that “Eaton . . . teaches server 116 obtains the audiological parameters for the hearing

aid system and communicate them to the mobile device.” See Office Action, page 4. The Examiner does not point to, and Applicants cannot find, any teaching or suggestion by Hagen or Eaton of “executing hearing aid fitting software on the computer . . . displaying the opportunity to download a firmware program to the hearing aid programmer in response to the execution of the hearing aid fitting software on the computer” as required by claim 15 of the instant application.

In view of the foregoing, Applicants respectfully submit that claim 15 is patentably distinct from the cited references. Accordingly, Applicants respectfully request that the rejection of claim 15 be withdrawn.

### **III. Claims 6-13 and 14 Rejected Under 35 U.S.C. § 103**

In the Office Action, claims 6-13 and 14 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable by Zhang in view of Hagen. Applicants respectfully traverse this rejection.

Claim 6 has been amended to recite, *inter alia*, “the firmware program downloadable to the hearing aid programmer only in response to an execution of the hearing aid fitting software on the computer.” Support for this amendment may be found in Applicant’s specification, for example, page 12, paragraph [0029]. Zhang does not teach or suggest this claimed subject matter.

Instead, Zhang states:

According to the invention, the hearing aid 106 can be upgraded with software resources provided at the hearing aid upgrade server machine 108. More particularly, the hearing

aid upgrade server machine 108 transmits the appropriate software resources to the client machine 104. The client machine 104 then instructs the hearing aid programming device 102 to program the hearing aid 106 in accordance with the software resources. The hearing aid programming device 102 then programs the hearing aid 106.

Zhang, page 3, paragraph [0029].

The Examiner points to this portion of Zhang to assert that Zhang teaches “the firmware program downloadable to the hearing aid programmer.” In the cited portion above, Zhang teaches that the “software resources” are sent to the client from an upgrade server machine. Zhang later states:

The server-side upgrade processing 300 begins with a decision 302 that determines whether an upgrade request has been received . . . Next, software resources (e.g., upgrade software) that are appropriate for the hearing aid device are determined 306 based on the device information.

Zhang, page 3, paragraphs [0034]-[0035].

Here, Zhang states that the “software resources” are sent to the client if an “upgrade request” has been received. Zhang does not teach or suggest downloading “the firmware program . . . to the hearing aid programmer only in response to an execution of the hearing aid fitting software on the computer.” Instead, as mentioned above, the software resources are only sent to the client if they are requested by the client.

The addition of Hagen does not overcome the deficiencies of Zhang. In fact, the Examiner merely points to Hagen to support the assertion that “Hagen . . . teaches a hearing aid programmer which is dynamically reprogrammed from the



computer through PCMCIA port.” See Office Action, page 9. The Examiner does not point to, and Applicants cannot find, any disclosure, teaching, or suggestion by Hagen of downloading “the firmware program . . . to the hearing aid programmer only in response to an execution of the hearing aid fitting software on the computer” as required by claim 6 of the instant application.

In view of the foregoing, Applicants respectfully submit that claim 6 is patentably distinct from the cited references. Accordingly, Applicants respectfully request that the rejection of claim 6 be withdrawn.

Claims 12 and 13 have been canceled. Claims 7-11 depend either directly or indirectly from claim 6. Because of this dependency upon an allowable base claim, Applicants respectfully request that the rejection of claims 7-11 be withdrawn.

Claim 14 has been amended to recite, *inter alia*, “wherein the firmware program downloads to the computer means in response to the execution of the hearing aid fitting software by the computer means.” Support for this amendment may be found in Applicant’s specification, for example, page 12, paragraph [0029]. Zhang does not disclose, teach, or suggest this claimed subject matter.

Instead, Zhang states:

According to the invention, the hearing aid 106 can be upgraded with software resources provided at the hearing aid upgrade server machine 108. More particularly, the hearing aid upgrade server machine 108 transmits the appropriate software resources to the client machine 104. The client machine 104 then instructs the hearing aid programming device

102 to program the hearing aid 106 in accordance with the software resources. The hearing aid programming device 102 then programs the hearing aid 106.

Zhang, page 3, paragraph [0029].

The Examiner points to this portion of Zhang to assert that Zhang teaches “the firmware program downloadable to the hearing aid programmer.” In the cited portion above, Zhang teaches that the “software resources” are sent to the client from an upgrade server machine. Zhang later states:

The server-side upgrade processing 300 begins with a decision 302 that determines whether an upgrade request has been received . . . Next, software resources (e.g., upgrade software) that are appropriate for the hearing aid device are determined 306 based on the device information.

Zhang, page 3, paragraphs [0034]-[0035].

Here, Zhang states that the “software resources” are sent to the client if an “upgrade request” has been received. Zhang does not teach, suggest, or disclose “wherein the firmware program downloads to the computer means in response to the execution of the hearing aid fitting software by the computer means.” Instead, as mentioned above, the software resources are only sent to the client if they are requested by the client.

The addition of Hagen does not overcome the deficiencies of Zhang. In fact, the Examiner merely points to Hagen to support the assertion that “Hagen . . . teaches a hearing aid programmer which is dynamically reprogrammed from the computer through PCMCIA port.” See Office Action, page 13. The Examiner does not point to, and Applicants cannot find, any disclosure, teaching, or

suggestion by Hagen of “wherein the firmware program downloads to the computer means in response to the execution of the hearing aid fitting software by the computer means” as required by claim 14 of the instant application.

In view of the foregoing, Applicants respectfully submit that claim 14 is patentably distinct from the cited references. Accordingly, Applicants respectfully request that the rejection of claim 14 be withdrawn.

**CONCLUSION**

For at least the foregoing reasons, Applicants believe that each of the presently pending claims in this application is in immediate condition for allowance. Accordingly, Applicants respectfully request a favorable action on the merits. If the Examiner has any further comments or suggestions, Applicants invite the Examiner to telephone the undersigned attorney to expedite the handling of this matter.

Applicants expressly disclaim all arguments, representations, and/or amendments presented or contained in any other patent or patent application, including any patents or patent applications claimed for priority purposes by the present application or any patents or patent applications that claim priority to this patent application. Moreover, all arguments, representations, and/or amendments presented or contained in the present patent application are only applicable to the present patent application and should not be considered when evaluating any other patent or patent application.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 08-2623.

Respectfully submitted,

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